

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

STEVEN T. NICHOLS,

PLAINTIFF,

VERSUS

CIVIL ACTION NO. 1:95CV130-S-D

JIMMY SIMMONS, In His Official Capacity
as Sheriff of Chickasaw County; JOHN DOE,
An Unknown Person, and JAMES DOE, An
Unknown Person, Individually and in Their
Official Capacities as Deputy Sheriffs of
Chickasaw County, Mississippi,

DEFENDANTS.

MEMORANDUM OPINION GRANTING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This cause is before the court on the motion of the defendant Sheriff Jimmy Simmons for summary judgment. The defendant argues that the unnamed deputy sheriffs are not properly before the court in their individual capacities. The plaintiff never amended his complaint to name the Doe-defendants, nor does he address the defendants' position regarding the unnamed parties. The plaintiff has abandoned any claim against the deputies individually. Accordingly, only the defendants in their official capacities are before the court.

Summary Judgment Standard

The summary judgment standard is familiar and well settled. Summary judgment is appropriate only if the record reveals that there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. F.R.C.P. 56(c). The

pleadings, depositions, admissions, answers to interrogatories, together with any affidavits, must demonstrate that no genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Federal Sav. and Loan Ins. V. Kralj, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the non-moving party. Reid v. State Farm Mut. Auto Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986). However, summary judgment is mandated after adequate discovery and upon proper motion against a party who fails to make a sufficient showing to establish the existence of an essential element to that party's case, and on which that party will bear the burden of proof at trial. Celotex, 477 U.S. at 322.

Facts

On July 10, 1994, the plaintiff was arrested by Officer Willie Dixon of the Mississippi Highway Patrol for driving under the influence of alcohol. The plaintiff was placed in the custody of the Chickasaw County sheriff's department around 6:30 p.m. Deputy Dwight Parker was the dispatcher who took custody of the plaintiff and locked him in the drunk tank. The drunk tank is located in the old part of the Chickasaw County jail. Generally, nonviolent offenders and trustees are maintained in this area. Only the drunk

tank door is locked in this section of the jail. The other cell doors are on an electric track and left unlocked due to fire safety and in order to provide extra area for the inmates to move around. Although the prisoners have the option to move freely from cell to cell, they are still confined within the old section.

Sometime between the time he was locked in the cell and 11:00 p.m. when he was removed, the plaintiff was assaulted by some other incarcerated individuals. As a result of the incident, the plaintiff's left ribs were bruised and the right side of his face was swollen and bruised. He did not sustain any fractures. The plaintiff's wife went to the jail around 11:00 p.m. to bond the plaintiff from jail. When Deputy Parker went to bring the plaintiff from his cell, he observed the injuries and was told by the plaintiff what had happened. The plaintiff remained at the jail for several hours to assist in the investigation of the assault, and afterwards he was taken to the hospital by his wife. It appears that some prisoners were able to manipulate the lock on the drunk tank door and open it without the use of a key. There is no evidence that the Chickasaw County Sheriff's Department was aware that the lock on the door of the drunk tank could be compromised by inmates and subject the individuals inside to assault.

Discussion

The plaintiff alleges that the defendants are liable under 42 U.S.C. § 1983 for not protecting him from fellow inmates, and for having a policy or practice which allowed inmates to roam within the old portion of the jail. First, the defendants assert that they had no warning of the dangerous propensity of any of the other inmates toward the plaintiff, or that the door of the drunk tank could be opened without the use of a key. Second, the defendant maintains that allowing the prisoners housed in the old section to roam freely from their jail cells was necessary since the doors are on slow electrical tracks which can create a serious fire hazard. Finally, the defendants argue that the practice facilitates goodwill amongst those inmates housed in the old section, since the majority of them are trustees or are part of the county work crews.

"Prison officials have a duty ... to protect prisoners from violence at the hands of other prisoners." Farmer, ___ U.S. ___, 114 S.Ct. 1970, 1977 (quoting Cortes-Quinones v. Jimenez-Nettleship, 842 F.2d 556, 558 (1st Cir. 1988)). But "inter-inmate violence as well as generally harsh prison conditions do not necessarily result in constitutional violations." Dorsey v. St. Joseph Co. Jail Officials, 910 F. Supp. 1343 (N.D. Ind. 1996) (citing Farmer, ___ U.S. at ___, 114 S.Ct. at 1976). To impose liability upon Chickasaw County pursuant to 42 U.S.C. § 1983, the plaintiff must prove: (1) a policy (2) of a county policymaker (3) that caused (4) the plaintiff to be subjected to a deprivation of

a constitutional right. See Boston v. Lafayette County, 743 F. Supp. 462, 467 (N.D. Miss. 1990); Barney v. City of Greenville, Miss., 898 F. Supp. 372, 376 (N.D. Miss. 1995). Counties are potentially liable for the policies and customs that are consciously and purposely adopted. See Burns v. Galveston, 905 F.2d 100, 103 (5th Cir. 1990). Recently, the United States Court of Appeals for the Fifth Circuit clarified the standard under which a policy is to be scrutinized. In Hare v. City of Corinth, Miss., 74 F.3d 633 (5th Cir. 1996), the Fifth Circuit stated:

As we have explained, no constitutionally relevant difference exists between the rights of pretrial detainees and convicted prisoners to be secure in their basic human needs. Since the Supreme Court has consistently adhered to a deliberate indifference standard in measuring convicted prisoners' Eighth Amendment rights to medical care and protection from harm, we adopt a deliberate indifference standard in measuring the corresponding set of due process rights of pretrial detainees.

* * * *

We hold that the episodic act or omission of a state jail official does not violate a pretrial detainee's constitutional right to be secure in his basic human needs, such as medical care and safety, unless the detainee demonstrates that the official acted or failed to act with deliberate indifference to the detainee's needs.

Id. 74 F.3d at 647-48; see also Howard v. Dickerson, 34 F.3d 978, 980 (10th Cir. 1994) (deliberate indifference standard applicable to pretrial detainees through Due Process Clause of Fourteenth Amendment); Swofford v. Mandrell, 969 F.2d 547, 549 (7th Cir. 1992); Colburn v. Upper Darby Township, 946 F.2d 1017-24 (3rd Cir. 1991); (Hamm v. DeKalb County, 774 F.2d 1567, 1574 (11th Cir.

1985); Gracia v. Salt Lake County, 768 F.2d 303, 307 (10th Cir. 1985); Whisenant v. Yuam, 739 F.2d 160, 163 n.4 (4th Cir. 1984).

The Hare court next directed its attention to the deliberate indifference standard as articulated in Farmer v. Brennan, 114 S.Ct. 1970, 1976, 128 L.Ed.2d 811, 62 L.W. 4446, 4448 (June 6, 1994). Even though Farmer dealt with a prison official's duty under the Eighth Amendment, the Hare court accepted the subjective definition of deliberate indifference as the standard for measuring the duty owed to pretrial detainees under the Due Process Clause.

The Hare court stated:

[W]e find that the Farmer formulation of the deliberate indifference standard properly captures the essence of the inquiry as to whether a pretrial detainee has been deprived of his due process rights to medical care and protection from violence. The Farmer standard of subjective "deliberate indifference serves under the Eighth Amendment to ensure that only infliction of punishment carry liability." Thus, the Farmer test purports to distinguish between errant inaction and infliction of punishment: Punishment is inflicted only when a prison official was aware of a substantial risk of serious harm to a convicted inmate but was deliberately indifferent to that risk.

Hare, 74 F.3d at 649 (internal citations omitted). Prior to the Hare decision, the Fifth Circuit applied the rational relationship standard to pretrial detainee's claims and the deliberate indifference standard for claims of prisoners.

The United States Supreme Court sought to define deliberate indifference in Farmer v. Brennan.

Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or

failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.

* * * *

Because, however, prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment, it remains open to the officials to prove that they were unaware even of an obvious risk to inmate health or safety.

* * * *

A prison official's duty under the Eighth Amendment is to ensure "reasonable safety," a standard that incorporates due regard for prison officials' "unenviable task of keeping dangerous men in safe custody under humane conditions." Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishment Clause.

Id. 114 S.Ct. at 1981-82 (internal citations omitted). The key is whether the officials knew or reasonably should have known of a substantial risk of serious harm and unreasonably failed to alleviate the risk. See Swofford v. Mandrell, 969 F.2d at 549 ("A detainee must show that the state actor knew of the risk or 'that the risk of violence was so substantial or pervasive that the defendants' knowledge could be inferred.'") (citing Goka v. Bobbitt, 862 F.2d 646, 651 (7th Cir. 1988)).

The Hare court sets forth a mechanism for determining whether liability attaches to a governmental entity.

We separate the two issues: the existence of a constitutional violation simpliciter and a municipality's liability for that violation. Different versions of the deliberate indifference test govern the two inquiries. Our opinion in this case makes clear that to prove an underlying constitutional violation in an individual or episodic acts case, a pre-trial detainee must establish that an official acted with subjective deliberate

indifference. Once the detainee has met this burden, she has proved a violation of her rights under the Due Process Clause. To succeed in holding a municipality accountable for that due process violation, however, the detainee must show that the municipal employee's act resulted from a municipal policy or custom adopted or maintained with objective deliberate indifference to the detainee's constitutional rights.

Id. 74 F.3d at 649 n.4. "The response demanded of jail officials with actual knowledge of such risk of serious injury is that he not act with deliberate indifference." Id. 74 F.3d at 649. "The duty to respond and the measure of the adequacy of the response are dependant each upon the other for their level of stringency." Id. 74 F.3d at 650. "As we have explained, however, the correct legal standard is not whether the jail officers 'knew or should have known,' but whether they have gained actual knowledge of the substantial risk of [injury] and responded with deliberate indifference." Id. 74 F.3d at 650.

There is no indication the defendants were aware of a substantial risk of harm to the plaintiff in particular. No evidence has been provided which indicates any level of culpability by the defendants, certainly not to the level of deliberate indifference.¹ Accepting the plaintiff's version as true, at best

¹ Even if the standard of review were still the "rationally related to a legitimate governmental objective" standard, the facts as alleged by the plaintiff do not create a question of fact as to the legitimacy of the defendants' action in allowing the prisoners in the old section of the jail to roam outside of their individual cells. The practice of allowing inmates to move freely about is reasonably related to a legitimate governmental objective and did not cause the injuries the plaintiff received.

the defendants might have been negligent for not having heard the assault upon the plaintiff or for failing to have a lock on the drunk tank which could not be opened by unauthorized individuals. But negligent action does not support liability under § 1983. Daniels v. Williams, 474 U.S. 327, 338 (1986); Davidson v. Cannon, 474 U.S. 344, 347 (1986). The assault on the plaintiff was clearly unforeseeable, and evidence is completely lacking as to any subjective knowledge of the defendants. Certainly, nothing has been presented which establishes a question of fact as to objective deliberate indifference on the part of Chickasaw County in allowing the prisoners to roam within the old section of the jail. Since the plaintiff has abandoned his claims against the Doe defendants in their individual capacities, and Jimmy Simmons was only sued in his official capacity, in practical terms this lawsuit is only against Chickasaw County. Accordingly, a successful motion by Jimmy Simmons disposes of all of the plaintiff's claims.

An order in accordance with this memorandum opinion shall be issued.

This _____ day of April, 1996.

CHIEF JUDGE